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11 OF SAN DIEGO

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 SANDRA S. YBARRA,
15
16 Plaintiff,

17 vs.

18 UNITED STATES OF AMERICA;
19 ANHEUSER-BUSCH, INC., dba
20 ANHEUSER-BUSCH SALES OF SAN
21 DIEGO; and DOES 1-20, inclusive,
22 Defendants.

Civil No. 08cv350 JAH(RBB)

**DECLARATION OF SAMANTHA LOPEZ IN
SUPPORT OF *EX PARTE* APPLICATION
FOR ORDER EXTENDING TIME OF
EXPERT DESIGNATIONS AND RELATED
DISCOVERY**

Date: TBA
Time: TBA
Judge: Magistrate Ruben B. Brooks

23 I, Samantha Lopez, declare:

24 1. I am an attorney licensed to practice before all courts of the State of California,
25 and I am associated with the law firm International Practice Group, a Professional Corporation,
26 counsel for Defendant Anheuser-Busch, Inc. ("ABI"). I have personal knowledge of all facts
27 stated in this declaration and if called to testify, I could and would testify competently and
28 truthfully to them in a court of law.

2. On April 26, 2007, Plaintiff Sandra Ybarra ("Plaintiff") initiated this lawsuit by
filing a complaint in the San Diego Superior Court, SDSC Case No. 37-2007-00065725-CU-PO-
CTL, against ABI ("Complaint No. 1").

3. On July 23, 2007, ABI filed an Answer to Complaint No. 1 in San Diego Superior
Court and on July 27, 2008, ABI filed a Notice of Removal to Federal Court on the basis of

1 diversity jurisdiction, Case No. 07cv1350 JAH (RBB).

2 4. On October 17, 2007, the Court filed a case management conference order
3 regulating discovery and other pre-trial proceedings ("Original CMC") in relation to the lawsuit
4 against ABI, Case No. 07cv1350 JAH (RBB).

5 5. On February 22, 2008, Plaintiff filed a lawsuit against the United States of
6 America ("USA"), Case No. 08cv0350 BEN (POR) ("Complaint No. 2").

7 6. On or about April 22, 2008, the USA filed an Answer to Plaintiff's Complaint No.
8 2.

9 7. On or about May 7, 2008, all parties filed a Motion to Consolidate the
10 aforementioned cases and stipulated to stay discovery proceedings until the cases were
11 consolidated. The parties also requested that the Court modify the Original CMC so that the USA
12 had sufficient time to conduct discovery.

13 8. On May 8, 2008, Judge John. A. Houston consolidated the cases, designating them
14 under a joint caption as Case No. 08cv350 JAH (RBB). Judge Houston did not however address
15 the discovery issues and deferred the scheduling and discovery to Judge Brooks. The parties
16 agreed to stay discovery until the Original CMC could be modified.

17 9. On June 6, 2008, this Court held an Early Neutral Evaluation Conference and
18 settlement conference in the consolidated case. At said conference, Plaintiff and Defendants
19 requested that the Original CMC be amended.

20 10. On June 6, 2008, the Court entered an Amended Case Management Conference
21 Order Regulating Discovery and Other Pre-Trial Proceedings ("Amended CMC Order").

22 11. Pursuant to the Amended CMC Order the defendants are required to designate
23 their respective experts in writing and provide written report, as required by Fed. R. Civ. P.
24 26(a)(2)(A) and (B), by September 2, 2008 and all parties are required to supplement its
25 designation in response to the other party's designation no later than September 16, 2008.

26 12. The Amended CMC Order also provides that all written discovery shall be served
27 no later than August 1, 2008 and that the parties complete discovery on or before October 3,
28 2008.

1 13. All parties have served written discovery, however responses to some discovery is
2 pending.

3 14. ABI served the USA, *via mail*, interrogatories, requests for production of
4 documents and requests for admission on August 1, 2008. Responses are due on or before
5 September 3, 2008 (one day after expert reports are due).

6 15. Plaintiff also served request for admissions on ABI and USA on August 1, 2008
7 via personal service, with responses due August 31, 2008 (two days before expert reports are due)

8 16. The depositions of four of the USA employees/former employee are noticed for
9 September 10, 2008 and September 11, 2008.

10 17. A site inspection of the subject premises is scheduled for September 25, 2008 at
11 10:00 a.m. and Plaintiff and ABI are working with the USA to coordinate this inspection as the
12 subject premises is located on the San Diego Naval Base.

13 18. The parties are also in the process of coordinating a joint defense medical
14 examination of Plaintiff, which the earliest possible date of said examination could not occur until
15 Mid-September.

16 19. On August 26, 2008, I contacted counsel for the USA and Plaintiff's counsel by
17 phone and email to: (a) request consent to an extension of time for expert disclosures, reports and
18 related discovery and (b) inform them that in the event they failed to consent, Plaintiff would bring
19 this ex parte application. Counsel for Plaintiff was unavailable and I left a message for him. Counsel
20 for the USA agreed to extend the time and agreed on a proposed schedule with respect to same.

21 20. On August 27, 2008, I attempted to contact Plaintiff's counsel *via email*, informing
22 him that counsel for USA had agreed to an extension and informing him of the reasons why ABI
23 and USA requested said extension. There was no response.

24 21. On August 28, 2008, I attempted *for a third time* to contact counsel for Plaintiff.
25 Plaintiff's counsel was reached and proposed that the parties push all the remaining discovery
26 dates back until after the October 6, 2008 settlement conference. I informed him that a
27 meaningful settlement conference could not be held at this point in time without having
28 concluded the pending discovery. I called and emailed plaintiff's counsel requesting, once again,

1 whether he was willing to extend the discovery deadlines and received no response.

2 22. All parties are aware of ABI's intent to bring this motion and have been informed
3 that ABI planned to file this motion if all parties did not agree to extend the discovery deadlines,
4 as proposed.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct and that this Declaration was executed on August 28, 2008.

7 /s/ Samantha Lopez
8 SAMANTHA LOPEZ
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